

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Telecommunications)	CC Docket No. 96-115
Act of 1996;)	
)	
Telecommunications Carriers' Use of)	
Customer Proprietary Network Information)	
And Other Customer Information;)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Section 271 and 272 of the)	
Communications Act of 1934, as Amended;)	
)	
2000 Biennial Regulatory Review - -)	
Review of Policies and Rules Concerning)	CC Docket No. 00-257
Unauthorized Charges of Consumers')	
Long Distance Carriers)	
_____)	

**REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC) Rules 1.415 and 1.419,² hereby submits its reply comments in the above-docketed proceeding. USTA filed comments in this proceeding on October 21, 2002, wherein it set forth its positions on the questions presented in this proceeding. In these reply comments, USTA will address comments filed by other interested parties concerning what appropriate regulations should govern the CPNI held by carriers that go out of business, sell part of their customer base, or file for bankruptcy. USTA's interest in this proceeding is to ensure that regulatory rules and policies that are ultimately applied to its

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

incumbent local exchange carrier (ILEC) members are within the limits imposed by Congress in section 222 of the Communications Act of 1934, as amended.³

DISCUSSION

A. CPNI Implications when a Carrier Goes Out of Business

The FCC seeks comment on carrier use and disclosure of CPNI when it sells its assets or goes out of business. Specifically, the FCC asks whether an existing carrier should be able to use CPNI to transition its customers to another carrier and if so, should the FCC require the existing carrier to provide notice to its customers acquired by the sale or transfer from another carrier under the FCC's current rules.⁴ In addition, the FCC seeks comment on when an existing carrier has obtained CPNI approvals from its customers, should it be required to obtain notice and approval for CPNI use and disclosure from the acquired customer.

In its comments, the Electronic Privacy Information Center's (EPIC) advocated that the FCC should implement an opt-in⁵ approach regarding CPNI when a carrier goes out of business. Under EPIC's opt-in approach, a telecommunications carrier would need to acquire express authorization from its customers in order to disclose their CPNI to an acquiring carrier. In addition, EPIC urges that FCC to "mandate that an acquiring carrier give at least 30 days advance notice to customers of the CPNI transfer."⁶ USTA disagrees.

USTA believes that the opt-in approach advocated by EPIC should not apply in instances where a telecommunications carrier sells its assets or goes out of business. If the FCC were to mandate such a regulatory burden, it would interfere with the transition of customers to the new service provider. Further, the FCC has mandated opt-in only in cases where disclosure occurs to

³ 47 U.S.C. § 222.

⁴ See Verification of Orders for Telecommunications Service, 47 C.F.R. § 64.1120(e).

⁵ "Under opt-in, carriers are prohibited from using a customer's CPNI unless the customer expressly approves the use that the carrier requests the customer to approve in its notice." FNPRM at ¶ 41.

⁶ See EPIC comments at 6.

unrelated third parties and to carrier affiliates that do not provide communications services.⁷ The FCC implemented the opt-in approach in certain circumstances to protect “consumers from unapproved disclosure of CPNI to third parties that have no business relationship with the customer and are not subject to enforcement under the Communications Act or the Commission’s rules such as those governing use and disclosure of CPNI.”⁸ Clearly, the acquiring telecommunications carrier will be subject to the Communications Act. Thus, the CPNI opt-in requirements would not be applicable in situations involving a carrier going out of business, selling part of their customer base, or filing for bankruptcy.

Rather, USTA agrees with the majority of commenters in this proceeding that the FCC should not implement additional rules in instances where a carrier going out of business is transferring CPNI.⁹ Carriers should be permitted to utilize CPNI to transition customers without having to acquire customer approval for use of the CPNI.¹⁰ We agree with AT&T Corporation that customers understand that in order to ensure continuity of service that the transfer of CPNI to the acquiring carrier is a part of the commercial transaction.¹¹ In addition, we agree with WorldCom that “requiring a carrier to abide by a 30-day waiting period would significantly delay or disrupt the service transition.”¹²

Moreover, we agree with AT&T Wireless Services, Inc. that once the transaction has been completed, the acquiring carrier will need to comply with the FCC’s CPNI notification rules that require a carrier to send a opt-out notice¹³ to its customers every two years.¹⁴ We also agree with AT&T Corporation that the acquiring carrier should not be required to obtain new

⁷ FNPRM at ¶ 50-68.

⁸ *Id.* at ¶ 30.

⁹ Comments of Verizon at 5, AT&T Corporation at 8, Nextel Communications, Inc. at 8, BellSouth at 2, Cellular Telecommunications & Internet Association at 8.

¹⁰ *Id.*

¹¹ AT&T Corporation at 4.

¹² WorldCom, Inc. comments at 6.

¹³ “Under opt-out, carriers would be required to provide customers with advance notice that they intend to use a customer’s CPNI and give the customer an opportunity to disapprove of the use.” FNPRM at ¶ 41.

CPNI approvals from the acquired customers prior to the expiration of the customers' current CPNI approval.¹⁵ The acquiring carrier should not be required to obtain new CPNI authorizations after an asset acquisition since the consumer has already elected whether to permit use of its CPNI by its telecommunications provider. Thus, acquiring carriers should be permitted to utilize CPNI without the need to notify consumers or obtain their approval.

CONCLUSION

For the reasons set forth above, USTA urges the FCC to conclude that no additional rules are required to protect CPNI transfers in circumstances where a carrier goes out of business, sells part of their customer base, or files for bankruptcy.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: 

Lawrence E. Sarjeant
Indra Sehdev Chalk
Michael T. McMnamin
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 2005
(202) 326-7300

November 18, 2002

¹⁴ See AT&T Wireless comments at 7 (citing 47 C.F.R. § 64.2008(d)(2)).

¹⁵ AT&T comments at 7, Nextel at 9,